

ONE YEAR 50 F PUBLISHED BY ONE NUMBER 5¢

THE LAWYERS CO-OPERATIVE PUBLISHING CO.

18c.

will bring you one copy of the new 500 page Index to Notes in 1-70 Lawyers Reports Annotated. This amount just covers postage, and is asked only because the supply is limited and we don't want to send it to anyone not having a real use for it.

Every L. R. A. subscriber will get one without an order, and at our expense.

The Lawyers Co-operative Pub. Co. Rochester, N. Y.

A New "Co=op." Digest of U. S. Reports



HE late Chief Justice Waite said of this Digest, "The best specimen of digest work I ever saw." That was twenty years ago when the first edition was published. Since then a great advance has been made in the art of making digests. But in the meantime we have not stood still. This Digest also

has shown a steady improvement in its successive editions, and from the first has been practically the only Digest in use, and with all editions of these reports.

In order that the remark of the great Justice may apply with equal truth to-day we are preparing an Entirely New Digest, covering all the decisions of the court down to date.

This Digest will be more comprehensive and complete than anything ever before attempted in the way of a digest of these reports. It will contain several new features of great interest.

We think you are justified in assuming that the number of years we have been compiling U. S. and other digests of uniform excellence, is a sufficient guaranty that this will be the best U. S. Digest ever published. It will include all the decisions of the Oct. 1905 term (to Vol. 202).

Wait For It

LAWYERS' CO-OP. PUBLISHING CO. ROCHESTER, N. Y. New York City, 81 Nassau St. Chicago, Lakeside Bldg. St. Paul, Nat. Ger. Am. Bank.

C 656





IMPORTANT SUBJECTS

This list contains the latest and best text-books on the greatest subjects of the law. You make no mistake when you order any of these important works. All are latest editions.

CARRIERS:	
Hutchinson, Carriers, 3rd ed., 3 vols., 1906.	
CONTRACTS:	
Page, Contracts, 3 vols., 1905. Parsons, Contracts, 9th ed., 3 vols., 1904.	18.00 18.00
CORPORATIONS:	
Beach, Private Corporations, 3 vols., 1905 Beale, Foreign Corporations and Taxation of Corporations, both Foreign and	
Domestic 1 vol., 1904 Boisot, By-Laws of Corporation, 2nd ed., 1901	6.00
Frost, Incorporation of Corporations, 2nd ed., 1908.	$\frac{3.00}{3.75}$
Helliwell, Stock & Stockholders, 1 vol., 1903	6,00
Noyes, Intercorporate Relations, 1902	6.00
DAMAGES:	
Joyce, Damages, 3 vols., 1903	18.00
Sutherland, Damages, 4 vols., 1903	24.00
EQUITY JURISPRUDENCE:	
Pomeroy, Equity Jurisprudence, 3rd ed., 6 vols., 1905	36.00
EVIDENCE:	
Elliott, Evidence, 4 vols., 1904-5. Wigmore, Evidence, 4 vols., 1904-5.	
HOTELS, ETC.:	
Beale, Hotels, Inns, Theaters, Sleeping Car Companies, etc., 1 vol., 1906	6.00
INSURANCE:	
Cooley, Insurance Briefs, 5 vols., 1905	
Kerr, Insurance, 1 vol., 1902. May, Insurance, 4th ed., 2 vols., 1900.	$6.00 \\ 12,00$
MARRIAGE & DIVORCE:	
Keezer, Marriage & Divorce, 1 vol., 1906.	4.00
MASTER & SERVANT:	
Dresser, Employers' Liability, 1 vol., 1902 Labatt, Master & Servant, (Employers' Liability), 2 vols., 1904	6.00
MUNICIPAL CORPORATIONS:	12.00
Abbott, Municipal Corporations, 3 vols., 1905-6.	10.00
	15,00
NEGLIGENCE: Thompson, Negligence, 6 vols., 1901-6	36.00
NUISANCES:	
Joyce, Nuisances, 1 vol., 1906	6.00
RAILROAD RATE REGULATION, ETC.:	
Beale and Wyman, Railroad Rate Regulation, 1 vol., 1906.	6.00
Interstate Commerce Reports, Vols. 1-11, (1887-1906) Judson, Interstate Commerce, 1 vol., 1905-6.	6.00
TELEGRAPHS & TELEPHONES:	0.00
Jones, Telegraph & Telephone Companies, 1 vol., 1906	6.00
WATERS:	0.00
Farnham, Waters, 8 vols., 1904	19.00
Patiniam, Waters, & voiss, 1901	10.00

Prices include delivery. We will sell any part or all of the above list, to responsible parties, on liberal terms.

THE MOST ESSENTIAL FEATURE OF A TYPEWRITER

first, last and all the time is that it shall be an

Underwood.



Don't make the mistake of thinking **any** visible writer will do—get the spirit of wanting the best and then

get the

UNDERWOOD

Underwood Typewriter Co.

A new, revised, and enlarged edition of

The Incorporation and Organization of Corporations

By THOMAS GOLD FROST, of the New York Bar

This new edition of the most compresive, most useful and most practical as well as the cheapest guide to the formation of business corporations under the laws of every State and Territory contains a synopsis digest of Incorporation Acts of all the States and Territories, including all the new legislation down to January, 1906. The instructions for amending charters have been greatly enlarged. 2300 cases are cited. New and more practical Forms and Precedents have been included.

8vo. Law Buckram. Price \$3.75 net, delivered.

GRAY'S PERPETUITIES

THE RULE AGAINST PERPETUITIES

By JOHN C. GRAY, Royall Professor of Law in Harvard University

The fullest and best treatment of the legal doctrine governing the creation of future interests in property by the American authority on the subject,

In this new edition many of the topics have been greatly amplified, the text being enlarged by about 150 pages.

The cases discussed and cited are nearly doubled, numbering now about 3,600.

8vo. Law Buckram. \$6.00 net, delivered.

Hesseltine's Trade Marks

A Digest of the Law of Trade Marks and Unfair Trade

By NORMAN F. HESSELTINE, Esq., of the Suffolk (Mass.) Bar

Invaluable to lawyer: making a specialty of this branch of practice, and to the general lawyer who desires to have at hand a compact statement of the rules governing Trade Marks and Unfair Trade, carefully worked out and analyzed, each rule or statement of law being supported by a digest of all the cases from which it has been formulated.

8vo. Law Buckram. \$5.00 net, delivered.

LITTLE, BROWN & COMPANY PUBLISHERS

254 WASHINGTON STREET, BOSTON

THE ORDER OF THE COIF

BY SERJEANT PULLING



HIS interesting historical account of the English order of Serieants - at - Law was

originally published at \$12.50 in 1884. It was reprinted a few years ago at \$3.00, handsomely bound in cloth, ornamented cover; eight full page illustrations, one in colors, of famous Serjeants in their robes and coifs, and of the early courts in session.

We have purchased the remainder of the edition, and will sell same at the reduced price of \$1.75 per copy delivered. The supply is very limited; send your order today and secure a copy of this interesting book.

LAWYERS CO-OPERATIVE PUB. CO. ROCHESTER, N. Y.

INCORPORATE

SOUTH DAKOT



HEAPEST cost, most liberal laws. No capitalization tax, no annual tax, no license fee. Directors' and stock-

holders' meetings not required to be held in State. Personal liability limited. All the privileges, advantages and protection of any State and at less cost than others.

We are at the State Capital

and will procure Charter, and maintain domiciliary office at low rates.

Copy of law and set of blanks free.

South Dakota Corporation Charter Co.

MERCHANTS BLOCK. PIERRE, S. D. ARE YOU GETTING THE CURRENT DECISIONS OF THE

UNITED STATES

SUPREME COURT

If it would be worth \$2.00 a year to you to get a prompt and full report of every decision handed down by the highest court in the land and the court of widest jurisdiction in the world, enter your subscription with us to-day for the

U. S. ADVANCE OPINIONS

published semi-monthly while the court is in session.

The Lawyers Co-operative Pub. Co., Rochester, N. Y.

c 679

Nervous Disorders

The nerves need a constant supply of phosphates to keep them steady and strong. A deficiency of the phosphates causes a lowering of nervous tone, indicated by exhaustion, restlessness, headache or insomnia.

Horsford's Acid Phosphate

(Non-Alcoholic.)

furnishes the phosphates in a pure and abundant form. It supplies the nerve cells with health-giving life force, repairs waste, restores the strength and induces restful sleep without the use of dangerous drugs. An Ideal Tonic in Nervous Diseases.

If your druggist can't supply you we will send a small bottle, prepaid, on receipt of 25 cents. Rumford Chemical Works, Providence, R. I.

BRINGS IT A subject text book a list of all utes and Diget librarian integral integrals of Law B

Where to Look For the Law

A 200-page catalogue by subjects of the most valuable text books and text work. Also a list of all American Reports, Statutes and Digests, and list of Abbreviations of Law Book Titles. Also brief description of our publications.

The Lawyers Co-operative Publishing Co.

Rochester, N. Y.

NEW YORK 81 Nassau St.

can have

any number.

0669

CHICAGO 505 Lakeside Bidg. ST, PAUL Ger. Am. Bk. Bidg.

ti

Case and Comment

NOTES OF

RECENT IMPORTANT. INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS REPORTS ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

Vol. 13.

NOVEMBER, 1906.

No. 6.

CASE AND COMMENT

Monthly. Subscription, 50 cents perannum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB.CO., Rochester, N. Y.

New York, 81 Nassau St.

by

ble

lso

tat-

rev-

orief

L Bids. CHICAGO, 225 Dearborn St.

Unfair Competition.

Within recent years a new class of cases seeking a remedy against what is called "unfair competition" has become somewhat well known in the courts. Unfortunately the term used to describe these cases quite fails to define their nature. There are many kinds of unfair competition in business which are not at all touched by the doctrine which the courts have developed in this line of cases. The practice of a powerful competitor to sell goods below cost for a limited time or in a limited field in order to break down a weaker competitor is certainly unfair competition, but it is not at all touched by the doctrine which has grown up under that name. The same is true, also, of a great variety of forms of oppressive and ruinous competition, against which the law has, up to the present time, furnished no adequate remedy. For clearness of understanding with respect to this modern doctrine to which many lawyers have yet given little or no attention, it may be worth while to consider what is the really distinctive and fundamental element in what the courts have called "unfair competition."

amination of the cases on the subject makes it reasonably certain that this doctrine, as thus far developed at least, relates only to competition which consists of deceiving the public by palming off imitations in lieu of the genuine articles which the purchasers suppose themselves to be buying. It is, in substance, the stealing of another's trade by deception. It may consist of imitating another's trademark, trade name, the labels, marks, or stamps upon his goods, the form, style, or appearance of his packages, or any other element or incident which may deceive purchasers and induce them to buy the goods of one proprietor supposing them to be those of another. "The elementary principle that no person has the right to sell his goods for those of another" is laid down in W. R. Lynn Shoe Co. v. Auburn-Lynn Shoe Co. 100 Me. 461, 4 L.R.A. (N.S.) -, 62 Atl. 499, as the basis on which rests the general law of unfair competition in trade. This succinctly and accurately states the substance of the doctrine.

The extent to which this doctrine goes is suggested by the somewhat novel case of Weinstock, L. & Co. v. Marks, 109 Cal. 529, 30 L.R.A. 182, 50 Am. St. Rep. 57, 42 Pac. 142, where, in addition to protecting the words "mechanics' store" as a trade name against its use by a rival dealer on the same street, the court granted a mandatory injunction to compel a dealer who had so closely copied the appearance of a rival store close by on the same street to adopt some method of distinguishing his place of

business so as not to deceive customers. This was obviously identical in principle with the cases in which the distinguishing marks upon goods were copied. In both instances the imitation was wrongful because its effect was to deceive the public and steal another's trade by such deception. Wherever any imitation or false representations will deceive the public into buying one person's goods believing them to be those of another, the principle would seem to be applicable.

One of the unsettled questions respecting this class of cases is that of the necessity of an actual intent to defraud in order to make the imitation or misrepresentation actionable. That innocent intent will relieve one from liability for damages in selling goods which are mistaken for those of another seems to be conceded. But the cases are in conflict as to whether innocence of intent will relieve him from an injunction against further continuance in the use of such deceptive imitation or misrepresentation. Cases on this subject are analyzed in a case note to the Lynn Shoe Case, above cited in 4 L.R.A.(N.S.)-; but the practical result of the divergent statements of the court on this point is not often serious. Cases which hold that, as the essence of action is fraud, and actual fraudulent intent is necessary, are substantially agreed that this fraudulent intent may be fairly inferred from such imitation or misrepresentation as will in reality deceive the public. Moreover, so far as the remedy by injunction is concerned, after a demand to discontinue the imitation or misrepresentation is made, its continuance can hardly be deemed innocent if the effect is to deceive the public; and therefore as to the future an injunction can probably be granted, though in what had previously been done the defendant may have been innocent. But, as a matter of principle, it seems reasonable to hold that, if a person imitates the goods of another, or any of their distinguishing marks or characteristics, with the result of deceiving the public and thereby injuring his competitor, an injunction should lie to prevent this wrong without regard to any intent or motive of the defendant. Equity should protect the competitor and the public against such deception without regard to the moral fault of

innocence in beginning the deception can be no good reason for allowing him to continue it after he knows that what he is doing is deceiving the public and injuring a competitor thereby. On the other hand, for what he has done innocently there seems to be no legal liability for damages.

Federal Power to Enforce Our Treaty Obligations.

A man who breaks his word is, in the business world, a pariah, and the nation which disregards a treaty obligation makes an indelible blot upon its history. Most governments are chargeable with bad faith if their subordinate officials or subjects repudiate the obligations of their treaties, because most governments are free from any constitutional restrictions which limit their power to compel their own people to observe a treaty obligation. But in this country we have a somewhat peculiar situation growing out of the complex relations of the Federal and state governments.

It is to the shame of the United States that we have more than once refused to recognize the sacred obligations of our treaties. It is well settled by the decisions of the Supreme Court that an act of Congress may supersede a prior treaty, and that in such case the courts must disregard the treaty and enforce the statute, leaving it to the political department of the government to adjust the difficulty that may arise in consequence. It is true that such repudiations, of our treaty obligations by act of Congress have, for the most part at least, been in violation of our treaties with the Indians or the Chinese, who, it could safely be presumed, would be powerless to punish us for our bad faith. An instance of this is the Chinese Exclusion Case, 130 U. S. 581, 32 L. ed. 1068, 9 Sup. Ct. Rep. 623, where the exclusion act was upheld though it was in violation of treaties. In this matter of the breaking of a treaty by act of Congress no constitutional restrictions on the part of the government can relieve us from bad faith because the law-making power is itself the government; but, when treaty obligations are ignored, or only repudiated, by the officials or people of some the person who caused it. At any rate his state, the question arises as to what are the powers of the Federal government to enforce the treaty. The recent episode of the exclusion of Japanese children from schools in San Francisco has created a question of international importance. The good faith of the United States as represented by the Federal government might be unimpeachable though the government might be powerless to compel the observance of treaty obligations; but this could only be if the government had ineffectually exercised all the power that it had for that purpose. The first question is, Does such exclusion violate our treaty with Japan? If so, the next question is, Can the Federal government prevent it? The opinion of Secretary Root is quoted by the press, to the effect that, under art. 6, \$ 2, of the Federal Constitution, which makes treaties a part of the supreme law of the land and binding on the judges in every state, "anything in the Constitution or laws of any state to the contrary notwithstanding," the Federal government has ample power to compel the officials of the state to refrain from any such discrimination against the Japanese as would violate the treaty. Unless this is so, our nation must stand in a ridiculous light before the world. In the nature of things, that constitutional provision which makes the treaty superior to the Constitution or laws of a state, and binding on its judges, must give to the Federal government the right to exercise a remedy in some form to enforce the treaty. injunction is the remedy sought in this case. The power of the Federal government to proceed by injunction to protect the transportation of the mails and prevent the obstruction of interstate commerce was established by the United States Supreme Court in Re Debs, 158 U. S. 564, 39 L. ed. 1092, 15 Sup. Ct. Rep. 900. And this is sufficient to suggest that such civil remedies as injunction, prohibition, quo warranto, and mandamus may be invoked by the Federal government in appropriate cases whenever treaty obligations are denied, though the citizens or officials of a state may be the parties to be controlled. The power that made the treaty must in some manner secure its observance. If the Japanese treaty is not violated by the exclusion of Japanese children from the schools, it does not appear that the government of the

e

n

18

t

y

ir

is

a-

of

to

11

ns

n-

at

he

it

n-

se

11-

ct

at

th

ıld

to

ice

30

ep.

eld

In

by

ns

ve

ng

en

re-

me

are

But, if the treaty is violated, it is another matter. Our government must be stultified in the sight of all nations if it cannot compel its own people to respect its own treaties. If any municipality or state could with impunity repudiate the obligations of a treaty of the United States, the situation would be intolerable. Such a government would be beneath contempt.

Government by Private Citizens.

The reports that San Francisco is aroused over a carnival of lawlessness existing there sharply recall the accounts of vigilance committees organized in earlier days to overthrow the rule of desperadoes who terrified frontier communities. The vigilance committees of those days proceeded irregularly, without sanction of law, and by violence, to establish a government of regularity, of order, and of law. In these days it is not likely that any vigilance committee is anywhere needed in this country to act by violence and outside of the law. But vigilance committees of another kind are undeniably necessary, and have a work of supreme importance to do.

To recapture the control of its own government has been the heroic duty of more than one great city in recent years. There may be humor or satire in saying that "the Dutch have taken Holland," but it has been no humorous or trifling matter for the people of some of our great cities to recapture possession of their own town. To dislodge the entrenched forces of corruption from their control of the government of the city has required as much courage and heroism as if the revolution were to be wrought by battles, and not by ballots. In New York, in Philadelphia, in Cincinnati, in Chicago, in St. Louis, in Minneapolis, and in other cities the struggle for the re-establishment of honest government for the people, as well as in form by the people, has been more important to civilization than many a bloody war of history. It is not necessary to exaggerate the evils that have existed: the ordinary citizen knows well enough what the facts have been. A new era has begun, but the fight is not over. It is not necessary to suppose that the picture in Winston Churchill's Coniston of the corruption of United States has any power in the matter. I the state legislature gives a just impression of the conditions. Honest men, some of whom are to be found in every legislature, do not stand in the foreground of that picture. The character of many of our legislatures has been much less tainted than that of this legislature of fiction; yet not even the imagination of the novelist has portraved corruption so rank, so bold, and so nearly universal as that which the sober facts of history record for some actual sessions of some of our state legislatures. A frank statement from any legislator who has seen much service will show that the forces of corruption have been by no means absent from the capitol of any state. The fight up to this time for the recapture of our own government has been chiefly made where it was most needed in our cities. There is plenty to do of the same kind in at least some of our state governments. But the history of the past few years gives room for almost unlimited confidence in the strength of the people to accomplish this result. Many noble men in public life have already led, and are still leading, the movement. To speak of it as a fight by the private people against their officials would be the rankest misrepresentation. It is a fight of the private people with the aid of honest officials against those of another class.

The need of an organization of private citizens to protect the rights of the people is nevertheless demonstrated by experience. Corruption in some cities has been a public scandal known far and wide for many years before any real revolt against it. Probably the civic revolution by which rings of grafters have been lately dethroned in some of these cities could have been accomplished nearly a generation earlier if the best citizens had organized for the purpose. But what everybody knows well enough about public graft no one is usually able to prove until by organized and systematic effort the secret facts are laid bare to the public. An organization of able and courageous citizens with plenty of funds to pay the expenses of their work, unhampered by any fear that their own political friends may be hurt thereby, can in any state do more in one year to free it from the scandals of bribery and corruption of officers, whether state or municipal, than has been done in a generation. It can also compel the faithful prosecution of political criminals who too often escape punishment by the tender- to secure good government in the interest

ness of those officials who are associated with them in politics. Patient, persistent, extensive, and secret investigations are often needed before any effective prosecution can be begun, even against grafters whose guilt is almost a matter of common knowledge. Prosecuting officers will not, often cannot, effectively do this investigating. It is at this point that the greatest work of these bodies of public-spirited citizens can be done.

Government by private citizens as the power behind the throne is in various forms constantly exercised. The political boss holding no state office, who dictates the legislation of the state, is the supreme illustration of this. Yet, while every citizen knows it, the disgrace of that situation hardly penetrates his calloused conscience because he has become accustomed to it. Some organization of good citizens is in almost every instance the real force that compels the enactment of any law of reform. A legislature rarely attacks any public evil of magnitude until it is compelled to do so by the pressure of public opinion brought to bear upon it by some body of public-spirited citizens. The press is a great power when aroused to attack the public evil; but it is a rare newspaper of the partisan sort that can be brought to attack any evil for which the officials of its own party are responsible, and non-partisan newspapers too often refuse to attack a local evil if their action might offend some of their subscribers or advertisers. But timid and subservient newspapers suddenly change front when they are confronted by a powerful body of citizens. Such an organization composing what may be called a vigilance committee. with no ends to serve except the public welfare, is the reserve power of government by the people when their nominal representatives misrepresent them. This is a great and yet almost unused force; but the organization in Delaware to protect the purity of the ballot, a similar organization of very eminent citizens in New York state, and the organization of citizens in San Francisco to purge the city of its powerful grafters and criminals, are all illustrations, or at least suggestions, of what the best citizens of a state can accomplish if they are willing to free themselves from partisanship and unite to give their combined influence and power

of the people. To do their needed work, such organizations must include men of high character, with no aims but the public good, in numbers sufficient to make them respected and feared, and with funds enough at their command to pay all the expenses of the most thorough and tireless efforts to detect and punish the men who corrupt any of the factors of our public life. Most of all, such a body of citizens must be unpartisan and ready to follow the trail of crime wherever it leads, without regard to the social or political standing of the criminal.

ted

nt,

oft-

ion

ose

wl-

ten

It

of

can

the

rms

0088

the

il-

izen

tion

ence

it.

al-

om-

orm.

evil

0 80

at to

rited

when

it is

that

which

onsi-

often

ction

rs or

vient

when

ly of

osing

ittee.

wel-

nt by

senta-

great

e or-

urity

very

d the

seo to

s and

least

of a

ing to

unite

power

terest

Election Comment.

In the immense mass of comment on the late elections, two conspicuous lessons seem to be clearly perceived by many observers. In their autopsy on the late campaign many people see symptoms which their pre-election diagnosis did not reveal to them. The first and greatest cause of the obvious unrest and disturbance of the public mind, which, indeed, was foreseen by the wisest observers, and is now seen for the first time by many, is a conviction, which has become general throughout the country, that great corporations and commercial interests, however great their value to the country in many directions, have become a menace, not only because of oppression and extortion by their monopolies, but even more because of their disregard, and even their defiance, of law, and their corruption of officials. Except for the fact that the national government has been doing in this country in the past few years the greatest work ever done in this country to unearth crimes of high officials, without regard to their partisanship, and to bring to justice the arrogant corporations that had defied the law, and that in various states and cities honest, thorough, and effective work has been done to overthrow the criminals, it cannot be doubted that the elections would have shown even more significant results of the people's unrest and dissatisfaction.

Another reason for the breaking down of party lines that is now evident, even to many unwilling observers, is in the growing rebellion of the people against political bosses, whether they are called Republicans or Democrats. It is significant that a lead-

ing Republican journal, always faithful to the dominant machine of its party, and to whom the word of the boss has been as the voice of Allah, pointed out in its post-election reflections that the Republican vote in the state was chiefly in the cities and great manufacturing centers, where "machine and boss manipulation and power are most in evidence." This sounds almost like treason in the boss's body-guard.

Will it blow over? is the question in the minds of many politicians. They may as well recognize that in the days to come the people are going to have something to say about their own government, and that they will not abdicate in favor of bosses and machines. They will not tolerate an oligarchy of professional and self-serving politicians. Nor will they permit the existence of a class of privileged lawbreakers too powerful for the law to control.

Index to New Notes IN AWYERS' REPORTS ANNOTATED 4 L.R.A.(N.S.) pages 1-592.

Covenant.

Effect of purchaser's knowledge of encumbrance in action for breach of covenant:—(I.) Introduction: (II.) the general rule; (III.) encumbrances affecting the title to land: (a) mortgages; (b) leases; (c) miscellaneous encumbrances; (IV.) encumbrances affecting the physical condition of land: (a) easements: (1) in general; (2) public and private rights of way; (b) restrictions; (c) timber rights and other burdens; (V.) illustrative cases

Homestend.

What constitutes a "family" under the homestead and exemption laws: - (1.) "Family" defined; (II.) different aggregations of people: (a) husband (b) father and child; (c) wife with dependents; (d) widower with dependents; (e) widow with dependents; (f) grandparent and child; (g) single persons; (h) other combinations; (i) temporary separation; (III.) rights acquired by survivorship: (a) by a widower; (b) by a widow: (1) generally; (2) a widow having children: (3) a widow and children: (4) abandonment of husband: (c) by children; (d) by a

309

mother; (e) by a dependent female; (f) by orphan grandchildren; (IV.) divorce; (V.) summary

Homicide.

Insulting words or conduct as a provocation to homicide :- (I.) The general and common-law rule: (a) statement of; (b) method of killing as affecting; (c) character of words or conduct as affecting: exceptions and judicial modifications: (a) where mutual combat results; (b) when combined with an assault; (c) rule that passion is the controlling element; (d) application to murder in second or lower degree; (III.) statutory modifications of the rule: (a) under miscellaneous provisions; (b) Texas provision as to insults to female relatives: (1) terms of: (2) the insult; (3) the time of killing; (4) the person killed; (5) passion and killing as a result of insult; (6) who are female relatives; (7) submission and determination of the issue; (IV.) conclusion

Withdrawal from participation in homicide, which will relieve from criminality

Master and servant.

Master's duty to provide medical assistance for his serveant :-- (I.) Generally: (a) slaves; (b) apprentices; (c) ordinary servants; (II.) specific agreements to provide medica. assistance; (III.) power of employers to defray the medical expenses of their injured servants: (a) generally; (b) exercise of this power by agents of individual employers; (c) exercise of this power by agents of corporations: (1) in cases where there is no special emergency: (a) railway companies; (b) other companies; (2) in cases where there is a special emergency: (a) railway companies; (b) other companies; (IV.) liability of master for negligence of practitioner employed to attend on a servant; (V.) duty to provide medical aid for seamen: (a) general rule; (b) what persons are within the scope of the rule; (c) limits of the shipowner's obligation under the general maritime law; (d) under statutes: (1) England: (2) United States; (e) duration of the obligation: (1) where no fault on the part of the shipowner or his agents is shown: (2) where the shipowner or his agents have been in fault

Duty of master to furnish safe appliances as affected by fact that defective appliances are prepared by fellow servants:—(I.) The common-law rule: (a) in general; (b) where the master is bound to furnish the appliance; (c) where the servant is bound to furnish the appliance; (d) where the master takes it upon himself to furnish the appliance; (II.) effect of employer's liability acts

Liability of master for malicious act of servant when master owes special duty to party injured:—(I.) In general; (II.) when malicious act is within scope of employment; (III.) when act is beyond scope of employment; (IV.) effect of injured party being the aggressor; (V.) extent of liability

Among the New Decisions.

Action. The right of an agent, who by mistake pays to a third party money in his possession belonging to his principal, to maintain in his own name an action for money had and received to recover it back, is sustained in Parks v. Fogleman (Minn.) 4 L.R.A.(N.S.) 363.

Stating of a woman that "she is a dirty, vile woman" is held, in Feast v. Auer (Ky.) 4 L.R.A. (N.S.) 560, not to impugn her virtue, and not to be actionable.

Arrest. See MASTER AND SERVANT.

Arson. An attempt to commit arson is held, in State v. Taylor (Or.) 4 L.R.A.(N.S.) 417, to be made by employing and paying persons to do the act, furnishing them materials and a horse, showing them how to start the fire, and starting them on their way, although the persons employed do not in fact intend to carry out their agreement, and one is acting with the knowledge of the owner of the building for the purpose of entrapping the others.

Attorneys. The power of an attorney, under his general authority, to discontinue an action by a dismissal without prejudice, is sustained in Bacon v. Mitchell (N. D.) 4 L.R.A.(N.S.) 244, and his client is held to be bound thereby.

Banks. A bank director is held, in Hicks v. Steel (Mich.) 4 L.R.A.(N.S.) 279, not to be liable for breach of his duty as such in inducing the bank to extend credit to an individual beyond the statutory limit, and in making false representations as to paper presented for discount, where he was not at the time acting as director, but as agent for the borrower.

Benevolent societies. The authority of officers of subordinate lodges of benevolent societies, by reason merely of such office, to waive any of the provisions of the rules and regulations of the order which enter into

and form a part of the contract of membership, is denied in Royal Highlanders v. Scovill (Neb.) 4 L.R.A. (N.S.) 421.

C

35

to

or

k,

y,

(.)

T-

ia

3.)

ng

a-

to

eir

ot

nt.

he

en-

ey,

ue

ice,

D.)

to

eks

to

in

an

and

per

not

ent

of

lent

, to

and

into

Bills and notes. A person who receives a check drawn on a bank in another place is held, in Lewis, H. & Co. v. Montgomery Supply Co. (W. Va.) 4 L.R.A. (N.S.) 132, not to be required to transmit such check by the only or last mail of the day next after its receipt, if such mail closes or departs at an hour so early as to render it inconvenient for the holder to avail himself of it.

A note indorsed by an accommodation indorser, before delivery, for the interest due on outlawed notes, upon which he was jointly and severally liable, is held, in Medomak Nat. Bank v. Wyman (Me.) 4 L.R.A.(N.S.) 562, to remove as to him the bar from the earlier notes.

Building and loan associations. The power of the board of managers of a building and loan association to transfer to another association the contract of a borrowing stockholder is denied in Cobe v. Lovan (Mo.) 4 L.R.A.(N.S.) 439.

In case of an advance by one loan association to take up a loan in another upon stock which has partly matured, it is held, in Butson v. Home Sav. & Trust Co. (Iowa) 4 L.R.A.(N.S.) 98, that the net amount of the loan is the sum still due, and not the face value of the loan, although the latter amount is charged on the books of the association, and a credit as of an advance payment thereon given for the withdrawal value of the stock in the other association.

Carriers. The right of a sleeping car company to refuse to admit to its car a person having a contagious disease, although he has purchased a ticket for passage thereon, is sustained in Pullman Co. v. Krauss (Ala.) 4 L.R.A. (N.S.) 103.

A street railway company is held, in Omaha Street R. Co. v. Boesen (Neb.) 4 L.R.A.(N.S.) 122, not to be an insurer of its passengers, nor to be bound to do everything that can be done to insure their safety; but to fulfil its obligations in that regard when it exercises the utmost skill, diligence, and foresight consistent with the practical conduct of the business in which it is engaged.

Where a passenger was injured by the starting of the train while he was alighting therefrom, the fact that the train stopped the usual and ordinary time at the station viding that all concealed weapons taken

is held, in Chicago, R. I. & P. R. Co. v. Wimmer (Kan.) 4 L.R.A. (N.S.) 140, not to be conclusive that a sufficient length of time was given the passenger to alight; and whether the stop was reasonably sufficient under the circumstances is held to be a question for the jury.

From the time a passenger places himself under the charge of the carrier as he begins his journey until he is afforded the opportunity to leave the premises of the carrier at its termination, he is held, in Fremont, E. & M. V. R. Co. v. Hagblad (Neb.) 4 L.R.A.(N.S.) 254, to be a "passenger being transported," within the meaning of a statute relating to injuries to persons while being transported on railroads, unless by some act not attributable to the carrier the relation ceases.

A street car company which has so overcrowded a car that passengers are compelled to stand upon the steps and platform is held, in Alton Light & T. Co. v. Oller (Ill.) 4 L.R.A.(N.S.) 399, to be bound to regulate the speed of the car so as not to endanger persons so situated.

Starting a street car before an incoming passenger has reached his seat is held, in Bennett v. Louisville R. Co. (Ky.) 4 L.R.A. (N.S.) 558, not to be negligence, where there is nothing in his appearance to indicate that he needs unusual care and precaution for his protection.

A carrier who fails to perform promptly his contract to transport the scenery and properties of a traveling show, knowing that their absence will prevent a performance, is held, in Weston v. Boston & M. R. Co. (Mass.) 4 L.R.A.(N.S.) 569, to be liable for the value of the ordinary earnings of the properties during the time the owner is deprived of their use, less the expense which he is saved by inability to exhibit; and the fact that such damages are not provided for in the shipping articles is held to be immaterial.

Cigarettes. See Constitutional Law. Commerce. See Constitutional Law.

Concealed weapons. Conviction of the offense of carrying concealed weapons is held, in McConathy v. Deck (Colo.) 4 L.R.A. (N.S.) 358, not to be necessary to work a forfeiture of them under a statute prescribing a punishment for such offense, and profrom persons violating the statute shall be forfeited to the county.

Constitutional law. The constitutionality of a statute prohibiting the sale of railroad tickets through brokers is sustained in State v. Thompson (Or.) 4 L.R.A.(N.S.) 480.

Power of the state to deny a proper person the right to hold in the original packages cigarettes which he has imported from another state is denied in State v. Lowry (Ind.) 4 L.R.A.(N.S.) 528.

Contracts. A telegram to a bidder for public work, "You are low bidder. Come on morning train,"—is held, in Cedar Rapids Lumber Co. v. Fisher (Iowa) 4 L.R.A. (N.S.) 177, not to conclude a contract with him.

See also HUSBAND AND WIFE.

A contract between an attorney and client for services to be rendered by the former is held, in Stroemer v. Van Orsdel (Neb.) 4 L.R.A.(N.S.) 212, not to be necessarily invalid because a part of the services to be rendered is the procurement of legislative action, nor because such contract provides for a contingent fee.

The mere denial of a contract by one against whom it is sought to be enforced is held, in Sprague v. Jessup (Or.) 4 L.R.A. (N.S.) 410, not to prevent its specific enforcement if the court is satisfied of the truth of the allegations of the complaint.

A parol contract by which two persons enter into a partnership to purchase real estate, one to furnish the money and take the title, and convey a half interest to the other upon receiving his share of the purchase price, is held, in Scheuer v. Cochem (Wis.) 4 L.R.A.(N.S.) 427, to be void under the statute of frauds.

The validity of a contract by a municipal corporation to locate public buildings at a certain place, in consideration of a donation toward the expense, is denied in Edwards v. Goldsboro (N. C.) 4 L.R.A.(N.S.) 589.

Where a written contract, entered into between a purchaser of certain goods and a person who signed for the seller, contained a provision that the contract "shall only be considered binding on the seller when signed by one or more of its officers;" and it does not appear that it was ever so signed, or that there was any consideration for the promise of the purchaser except the contemplated mutual obligations to be assumed by the seller, it is held, in Atlanta Buggy

Co. v. Hess Spring & Axle Co. (Ga.) 4 L.R.A.(N.S.) 431, that the contract was not binding on either party, and the purchaser might withdraw from it before it became mutually binding by acceptance in the manner agreed upon; and subsequent ratification of the contract by the seller is held not to change its written terms so as to make the contract binding on the purchaser before it has been signed by one or more of the officers of the seller.

Counties. The power of a county, in the absence of express legislative grant, to enter into a contract for the employment of a tax ferret, is denied in Stevens v. Henry County (III.) 4 L.R.A.(N.S.) 339, even though the duty of discovering untaxed property has not been placed upon the public officials.

Covenants. Knowledge by a purchaser of real property of an unexpired lease of the property is held in Browne v. Taylor (Tenn.) 4 L.R.A.(N.S.) 309, not to prevent his maintaining an action for breach of covenant because of such lease.

A covenant in a lease, whereby the lessor expressly stipulates that he will not be bound to make repairs, alterations, additions, or improvements upon the leased premises, but agrees that the lessee, at his option, may make such as shall be necessary, and that he will reimburse him therefor to an amount named, is held, in Willcox v. Kehoe (Ga.) 4 L.R.A.(N.S.) 466, to be a personal obligation on the part of the original lessor, and not to run with the reversion, so as to bind an assignee thereof.

Criminal law. Acquittal of a sales agent upon a charge of embezzlement and larceny in retaining funds collected from customers is held, in Spears v. People (Ill.) 4 L.R.A. (N.S.) 402, not to be a bar to a subsequent prosecution for forgery in making false notes of the customers, although the two indictments relate to the same transaction.

To warrant the application of a statute authorizing additional punishment of one convicted of crime upon proof of former convictions, it is held, in State v. Smith (Iowa) 4 L.R.A.(N.S.) 539, that the identity of the accused and the one against whom the former judgments were entered must be established by affirmative evidence; mere proof of identity of names not being sufficient.

Deeds. A deed to real estate, containing

the following provision: "Reserving to said parties of the first part all the rights, privileges, and benefits secured under an oil and gas lease executed by said parties of the first part, with full power and right to renew or extend, change or modify, said lease as fully and to the same extent as though this conveyance had not been executed. It is intended hereby to reserve all oil and gas privileges in and to said premises,"—is held, in Moore v. Griffin (Kan.) 4 L.R.A. (N.S.) 477, to constitute an exception, and not a reservation; and the title to the oil and gas in the lands is held to remain in the grantors.

ot

er

ne

n-

a.

ot

ke

re

he

he

en-

fa

ry

ven

xed

ub-

of

the

vlor

ent

of

SSOT

be

ddi-

ased

his

eces-

iere-

llcox

be a

orig-

ever-

gent

ceny

mers

R.A.

quent

false

two

ction.

atute

one

ormer

Smith

entity

whom

ust be

mere

g suf-

aining

Descent and distribution. The distributive share of the real estate of an heir debtor to the estate of his ancestor is held, in Marvin v. Bowlby (Mich.) 4 L.R.A.(N.S.) 189, not to be chargeable with such indebtedness, either as land or as the proceeds thereof in the hands of the administrator. Electric railroads. See Highways.

Eminent domain. The right of the legislature to confer the right of eminent domain upon a tunnel company organized to project a tunnel to drain, ventilate, and aid in securing the mineral from mines along its course is sustained in Tanner v. Treasury Tunnel, M. & R. Co. (Colo.) 4 L.R.A. (N.S.) 106.

That a statute providing for condemnation of a right of way for an irrigation ditch must provide for notice to the person whose land is to be taken, of the hearing for fixing the damages, is declared in Sterritt v. Young (Wyo.) 4 L.R.A.(N.S.) 169; and it is held not sufficient that notice is provided of the time for appointment of the appraisers.

Evidence. A communication to a peace officer to aid in detection of crime is held, in Miller v. Nuckolls (Ark.) 4 L.R.A.(N.S.) 149, to be privileged only when made in good faith, not when made recklessly, with the intention to gratify personal malice toward the person affected by the charge, or his family.

One killed at a railroad crossing, and seen to have used due care in looking for trains as he approached the crossing, until he passed beyond the sight of witnesses, is held, in Hanna v. Philadelphia & R. R. Co. (Pa.) 4 L.R.A. (N.S.) 344, to be presumed to have done his duty, and not to have been guilty of contributory negligence at the point of crossing.

The presumption that one who was killed while crossing a railroad track looked and listened before attempting to cross it is held, in Carlson v. Chicago & N. W. R. Co. (Minn.) 4 L.R.A.(N.S.) 349, to be destroyed where the plaintiff introduces direct and affirmative evidence as to exactly what occurred, and where it also appears from the undisputed evidence that, if the deceased had looked and listened before going upon the crossing, he must have seen and heard the train approaching.

The presumption that a person approaching a railroad crossing exercised due care and caution is held, in Wabash R. Co. v. De Tar (C. C. A. 8th C.) 4 L.R.A.(N.S.) 352, to be disputable, and not to exist where the surrounding circumstances are shown to have been such that, had the injured person taken reasonable precautions for his safety, the injury would not have occurred.

False imprisonment. A plaintiff who abandons a suit in which defendant has been arrested on mesne process, before it is entered in court, is held, in Gibson v. Holmes (Vt.) 4 L.R.A.(N.S.) 451, not to be able to justify under the writ in an action by defendant for false imprisonment.

Firearms. See NEGLIGENCE.

Highways. An interurban electric street railroad, when attempting to acquire the rights of abutting owners in the highway, is held, in Abbott v. Milwaukee Light, H. & T. Co. (Wis.) 4 L.R.A.(N.S.) 202, to be upon the same plane with commercial railroads generally.

The location, without authority, of a voting both in a public highway, is held, in Haberlil v. Boston (Mass.) 4 L.R.A. (N. S.) 571, to constitute a defect therein which will require the municipal corporation to exercise reasonable diligence to protect the public travel.

Homestead. A mother, and an adult son who is incapable of caring for himself and receives support from her, are held, in Sheehy v. Scott (Iowa) 4 L.R.A.(N.S.) 365, to constitute a family capable of claiming a homestead.

That heirs do not take the homestead of their ancestor free from his debts contracted prior to its acquisition, under a statute providing that the homestead of every pensioner, whether the head of a family or not, purchased with pension money, shall be exempt, and such exemption shall apply to debts contracted prior to its purchase, is declared in Beatty v. Wardell (Iowa) 4 L.R.A.(N.S.) 544, where, under the statute, such exemption would not apply to homesteads in general.

Homicide. Mere words, however abusive and insulting, are held, in State v. Buffington (Kan.) 4 L.R.A.(N.S.) 154, not to justify an assault, nor to constitute a sufficient provocation to reduce to manslaughter what would otherwise be murder.

The mere attempt to flee from the scene of a homicide before the fatal shot was fired is held, in State v. Forsha (Mo.) 4 L.R.A.(N.S.) 576, not to absolve from responsibility one who aided, abetted, and encouraged its commission to the extent of commanding the one who committed it to shoot deceased.

Husband and wife. Refusal by an English woman to accompany her husband upon his emigration to this country to better his condition in life, without other excuse than disinclination to leave her native land, is held, in Franklin v. Franklin (Mass.) 4 L.R.A.(N.S.) 145, to be desertion which will entitle him to a divorce.

In Kansas coverture is held, in Harrington v. Lowe (Kan.) 4 L.R.A.(N.S.) 547, to afford no ground for declaring invalid a married woman's contract, even although she possesses no separate estate or separate trade or business.

Insurance. A condition in a policy of fire insurance, providing that, if the interest of the insured be other than unconditional and sole ownership, or if the subject of the insurance be a building on ground not owned by the insured in fee simple, the policy shall be void, is held, in Re Millers' & Mfrs. Ins. Co. (Minn.) 4 L.R.A.(N.S.) 231, to apply to the existing conditions at the time the insurance is taken, and not to future changes in title, although the company made no inquiries as to title, and the insured made no representations in regard to it.

A beneficial association issuing death benefit certificates is held, in Lyon v. United Moderns (Cal.) 4 L.R.A.(N.S.) 247, not to be within the meaning of a question in an insurance application as to whether or not applicant has ever been rejected by any company.

Failure of arbitration through no fault of the insurance company is held, in Grady v. Home F. & M. Ins. Co. (R. I.) 4 L.R.A. (N.S.) 288, not to abrogate a provision in owner of an office building to keep in proper

the policy that no action shall be brought until the amount of the loss has been settled by arbitrators, and there is nothing to show that arbitration has become impossible.

The right to subject the surrender value of a debtor's life insurance policies, which were, prior to the contracting of the indebtedness, and not in contemplation thereof, made payable, in case of the debtor's death, to his wife and children, is denied in National Bank of Commerce v. Appel Clothing Co. (Colo.) 4 L.R.A.(N.S.) 456, although he had power to change the beneficiaries, and, in case he lived out the term of the policies, the amounts due on them were payable to him.

Judgment. Refusal of a trial court to open a default and permit the filing of an answer is held, in Douglas v. Badger State Mine (Wash.) 4 L.R.A.(N.S.) 196, to be an abuse of discretion, where defendant's attorneys, living a long distance from the place of trial, presented a motion to make the complaint more definite, accompanied by an argument, and relied upon plaintiff's counsel to notify them of the result of the motion, which was not done, so that the default was incurred, immediately after which an affidavit of meritorious defense and excusable neglect and an answer were ten-

That the lien of a judgment will reach the interest in the coal remaining in place, of a landowner who has leased at a certain yearly rental the right to mine a specified amount of coal from the land each year, the contract to terminate when the coal shall all have been removed or the conditions of the lease are broken, excess payments in any year to entitle the lessee to take out a corresponding additional amount of coal at any time within six years, is declared, in Coolbaugh v. Lehigh & W. Coal Co. (Pa.) 4 L.R.A.(N.S.) 207; and the sale thereunder is held to carry the incidental right to the rent or royalty under the lease.

A claim of one as heir at law to real estate is held, in Remilliard v. Authier (S. D.) 4 L.R.A.(N.S.) 295, to be cut off by a judgment against him in an action to quiet title, in which the title is put in issue, and he might have presented such claim, but did not.

Landlord and tenant. The duty of the

CASE AND COMMENT.

condition the portions of the building retained in his possession is held, in Whitcomb v. Mason use of Levinson (Md.) 4 L.R.A.(N.S.) 565, not to extend to keeping outer doors unlocked on Sunday to enable tenants to remove large pieces of furniture in case of fire.

point of crossing.

a

e

d

8

X-

n-

he

a

IT-

ed

he

all

of

in

t a

at

a.)

der

the

real

(S.

y a

uiet

but

the

oper

Limitation of actions. See BILLS AND

Logs. Merely permitting logs to remain upon rollways is held, in Log Owners' Booming Co. v. Hubbell (Mich.) 4 L.R.A. (N.S.) 573, not to forfeit title to them under a statute providing for forfeiture of logs allowed to float on land adjoining a stream.

Master and servant. The owner of a vessel is held, in The Kenilworth (C. C. A. 3d C.) 4 L.R.A.(N.S.) 49, not to be liable for the result of improper treatment of a sailor's fractured leg, if the master concluded, in the exercise of his best judgment, that no frac' are existed, which conclusion, under the circumstances, was not unreasonable, and the treatment afforded would have been neither negligent nor improper had the conclusion been correct.

That a master does not fulfil his duty to his servants with respect to repairing a broken chain which is part of the permanent equipment for handling bars of iron, by furnishing a competent smith with sufficient materials, is declared in Haskell v. Cape Ann Anchor Works (Mass.) 4 L.R.A.(N.S.) 220.

The employment of a detective to ascertain and report the facts as to who was concerned in a robbery is held, in Milton v. Missouri P. R. Co. (Mo.) 4 L.R.A.(N.S.) 282, not to render the employer liable for an arrest made by him for the purpose of ascertaining whether or not the person arrested was concerned in the robbery.

A telegram directing a conductor to take on a car with a broken drawbar next to his eabin car is held, in Shuster v. Philadelphia, B. & W. R. Co. (Del.) 4 L.R.A.(N.S.) 407, to mean next behind, at the end of the train; and the superintendent sending it is held not chargeable with negligence in ease the conductor places the car in front of the cabin car, where it injures a fellow servant.

Whether a carrier's agent is acting within the line of his employment or not in shooting a person who has used abusive language dent to its business.

to him concerning storage charges on baggage is held, in Daniel v. Petersburg R. Co. (N. C.) 4 L.R.A.(N.S.) 485, to be a question for the jury.

Where a master ewes to a third person the performance of some duty to do or not to do a particular act, and commits the performance of the duty to a servant, it is held, in Stranahan Bros. Catering Co. v. Coit (Ohio) 4 L.R.A. (N.S.) 506, that the master cannot escape responsibility if the servant fails to perform it, whether such failure is accidental or wilful, or whether it is the result of negligence or malice.

Where the negligence of the master is the proximate cause of an injury to a servant, it is held, in Schwarzschild & S. Co. v. Weeks (Kan.) 4 L.R.A.(N.S.) 515, that the master will be held liable notwithstanding the negligence of the master may have been set in operation by the act of one who otherwise might be held to be a fellow servant.

Municipal corporations. See Contracts; Highways.

Negligence. See also EVIDENCE.

A railroad company is held, in Pannill v. Potomac, F. & P. R. Co. (Va.) 4 L.R.A. (N.S.) 80, to owe no duty to children trespassing on its property to keep its turntable in such condition that they cannot be injured by playing on it.

Where persons are gunning together, and an accident occurs through the unexpected discharge of one of the guns, it is held, in Siefker v. Paysee (La.) 4 L.R.A.(N.S.) 119, that the negligence of the person handling the gun must be gross in its nature in order to render him liable for the accident.

That safety gates where a railway crosses a highway are open is held, in Koch v. Southern California R. Co. (Cal.) 4 L.R.A.(N.S.) 521, not to be such an absolute assurance of safety that a traveler on the highway can proceed to cross the tracks without any precaution as to the possible approach of trains.

Nuisance. A corporation organized for the generation of electricity under legislative authority for public service is held, in Townsend v. Norfolk Railway & Light Co. (Va.) 4 L.R.A. (N.S.) 87, not to be acting in its public capacity in locating its power house, so as to be absolved from liability for injuring neighboring property by the smoke, noise, and escaping electricity incident to its business.

Partnership. A statute permitting arrest for fraud is held, in Ledford v. Emerson (N. C.) 4 L.R.A. (N.S.) 130, to apply when, by reason of the character of the transaction, or the general termination of the partnership dealings, an action at law will lie against one partner in favor of the other.

See also CONTRACTS.

Picketing. The right to an injunction to restrain striking employees and the union to which they belong, and which is aiding them, from congregating about the entrance to the place of business of their former employer and endeavoring to persuade his customers to withhold their patronage from him, is sustained in Jensen v. Cooks' & Waiters' Union (Wash.) 4 L.R.A.(N.S.) 302.

Principal and agent. See also ACTION; CONTRACTS.

Railroads. See EVIDENCE; NEGLIGENCE. Shelley's Case. See WILLS.

Specific performance. See Contracts.

State institutions. A state hospital established to care for insane persons is held, in Leavell v. Western Kentucky Asylum (Ky.) 4 L.R.A. (N.S.) 269, not to be liable for torts committed by a person under its care who is permitted to assist in the work of the institution, notwithstanding the statute provides that it may sue and be sued.

Stock exchange. One who purchases, in the name of his partner, a seat in a stock exchange, is held, in Zell v. Baltimore Stock Exchange (Md.) 4 L.R.A.(N.S.) 435, to have, notwithstanding knowledge on the part of the officers of the exchange of the facts, no equity to prevent the enforcement of a rule of the exchange that a seat may be sold for the debts of the member holding it in favor of other members.

Street railways. A declaration of forfeiture of a street railway privilege in a street by the council of the town, effected by a repeal of the ordinance by which the privilege was granted, pursuant to a reservation of power so to do for cause and after notice, is held, in Wheeling & E. G. R. Co. v. Triadelphia (W. Va.) 4 L.R.A.(N.S.) 321, not to have the force and effect of a judicial determination of the existence of cause for forfeiture, and not to preclude a resort to the courts by the railway company for vindication of its rights.

See also HIGHWAYS.

Telegrams. In the absence of notice of personal injuries.

facts or circumstances calculated to arouse suspicion in the mind of a person of ordinary prudence and intelligence, it is held, in Bank of Havelock v. Western U. Teleg. Co. (C. C. A. 8th C.) 4 L.R.A.(N.S.) 181, that the operators of a telegraph company are not required to investigate or ascertain the identity, or authority to send it, of the person who tenders a message for transmission, whether that message is in writing, or is spoken directly to the operator, or is communicated to him by telephone.

Ticket brokers. See Constitutional

Trade names. To constitute an infringement on a trade name, it is held, in Regent Shoe Mfg. Co. v. Haaker (Neb.) 4 L.R.A. (N.S.) 447, that it is necessary that the two places of business be in actual competition with each other; and, where one is engaged exclusively in the retailing of boots, shoes, and rubbers, and the other in the manufacture and wholesale jobbing of such goods, there is held to be no such competition as will warrant an order restraining the latter, at the suit of the former, although the names of the firms are of similar import, and although the retail firm had legally acquired its trade name before the organization of the wholesale company.

Turntable. See NEGLIGENCE.

Wills. A provision in a will vesting a fund in a trustee with directions to pay the income to testator's son until he attains a certain age, when the fund shall become his absolutely, that, in case the son dies before reaching such age, "it shall go to his heirs,"—is held, in Bennett v. Bennett (III.) 4 L.R.A.(N.S.) 470, not to vest the title in the son under the rule in Shelley's Case, so as to defeat the testator's intention, but is to be regarded as one of purchase or substitution.

Writ and process. Service by publication upon a domestic corporation which has failed to provide officers or agents upon whom other service may be had is held, in Clearwater Mercantile Co. v. Roberts, J. & R. Shoe Co. (Fla.) 4 L.R.A.(N.S.) 117, to constitute due process of law.

The servants or agents of the lessee of a railroad are held, in Chicago, B. & Q. R. Co. v. Weber (Ill.) 4 L.R.A.(N.S.) 272, not to be the agents of the lessor for the purpose of receiving service of process in actions for necessoral injuries.

One who has exclusive supervision and control of some department of the corporation's business, the management of which requires of such person the exercise of independent judgment and discretion, and the exercise of such authority that it may fairly be said that service of summons upon him will result in notice to the corporation, is held, in Federal Betterment Co. v. Reeves (Kan.) 4 L.R.A.(N.S.) 460, to be a managing agent, within the meaning of the statute providing for the service of summons upon a managing agent of a foreign corporation.

New Books.

t

0

8,

e-

ls,

8.8

er,

he

rt,

ac-

79.-

a

the

ins

me

lies

his

11.)

in

, 50

t is

sti-

tion

has

ipon

1, in

J. &

, to

of a

. Co.

ot to

rpose

s for

"Kentucky Opinions." Containing all the heretofore unreported opinions handed down by the court of appeals of Kentucky. In 12 to 14 volumes. Vol. 1 now ready. \$5 per vol.

"Mississippi Decisions." Containing unreported opinions of the supreme court of Mississippi. Compiled by William Hemingway and C. M. McDonald. In 12 to 14 volumes. Vol. 1 ready. \$5 per vol.

"Principles of the English Law of Contract." By Sir W. R. Anson, 11th ed. With Notes of American Cases by Ernest W. Huffcut. Cloth, \$3. Sheep, \$3.50.

Bender's "Lawyers' Diary and Directory, 1907." \$2.

"Selected Cases on Public Service Companies, Public Carriers, Public Works, and Other Public Utilities." Edited and Annotated by Joseph H. Beale and Bruce Wyman. \$4.

"American Consular Jurisdiction in the Orient." By Frank E. Hinckley. \$3.50.

"The Power to Regulate Corporations and Commerce." By Frank Hendrick. \$4.

"The English Patent of Monopoly." B W. Hyde Price. \$1.50.

"New York Supplement." Vol. 99. \$4.

"Annotated Code of Civil Procedure of New York." With Amendments to 1906. By Frank B. Gilbert. \$10.

"Laws of New York Relating to General, Religious, and Non-Business Corporations." By Robert C. Cumming and Frank B. Gilbert. 12th ed. \$2.

"Principles and Methods of Taxation."
By G. Armitage Smith. \$1.25.

"How to Suppress a Malpractice Suit, and Other Medical Miscellanies." By T. Hall Shastid. \$1.50.

"The Law of the Westgoths, According to the Manuscript of Æskil." With Introduction and Explanatory Notes by Alfred Bergin. Paper, 75 cts.

"Lincoln the Lawyer." By Frederick Trevor Hill. (The Century Co., New York.) 1906. 1 vol. \$2.00.

Anything new respecting the life of Abraham Lincoln is of surpassing interest. Lincoln's experiences as a lawyer, and their importance in the development of his power to grapple with the stupendous problems of his career as President, have never before been adequately set forth. To all people, but especially to lawyers, this book is of great interest.

"Toxicology." The nature, effects, and detection of poisons, with the diagnosis and treatment of poisoning. By Cassius M. Riley, 3d ed., revised and enlarged. With illustrations. (P. Blakiston's Son & Co., Philadelphia.) 1906. 1 vol. \$1.50.

This book was prepared, first for the author's students, and second, as a reference book for physicians. But it is a handy volume, also, for all lawyers who have to deal with questions of poisoning, and such cases are unfortunately numerous.

"The Power to Regulate Corporations and Commerce." By Frank Hendrick. (G. P. Putnam's Sons, New York.) 1906. 1 vol. \$4.00.

This attempts to define the limits within which state and Federal governments can secure freedom of trade by control of persons and things engaged therein, and also the respective powers of the departments of government. It deals with the results of more than two thousand cases relating to the subject, and makes an important contribution to a question of exceptional public interest.

Recent Articles in Caw Journals and Reviews.

"Where Part of the Consideration of a Contract is Void, Illegal, or Unenforceable."—39 Chicago Legal News, 93.

"Future Interests in Land,"—22 Law Quarterly Review, 383.

"Protected Life Estates: A Suggestion."

—22 Law Quarterly Review, 401.

"Marine Insurance—The Sue and Labour Clause."—22 Law Quarterly Review, 406. "Some Recent Attacks on the American Doctrine of Judicial Power."—40 American Law Review, 641.

"Should the Proposed Treaty on Collision be Made the Law of the United States?"— 40 American Law Review, 671.

"The Inheritance Tax Law of Kentucky."

—40 American Law Review, 711.

"The Law of Usury as Affecting Transactions between Factors or Commission Companies and Their Customers or Clients."—63 Central Law Journal, 302.

"Insurance Policies on the Lives of Paupers."-70 Justice of the Peace, 481.

"Transfer of Powers under Electric Lighting Provisional Orders."—70 Justice of the Peace, 482.

"The Act of Congress Known as the Employers' Liability Act Affecting Common Carriers is Unconstitutional and Void."—63 Central Law Journal, 278.

"Assignment of Wages to be Earned in the Future, in the Absence of a Contract of Employment for Stipulated Wages and for a Stipulated Period of Time."—63 Central Law Journal, 285.

"It is Better to Seek the Fountains than Wander down the Rivulets."—39 Chicago Legal News, 75.

"A Consideration of the Uniform Negotiable Instruments Law."—39 Chicago Legal News. 76.

"The Evolution and Prevention of Trusts and Monopolies."—68 Albany Law Journal,

"The Law Providing for a Municipal Court in Chicago."—68 Albany Law Journal. 246.

"Legal Prevention of the Use of Poison in the Embalming Fluid by Undertakers or Others."—68 Albany Law Journal, 227.

"The Law of Bank Checks (Practical Series)."—23 Banking Law Journal, 603, 687.

"A Criticism of the Railroad Corporation Law of Pennsylvania."—54 American Law Register, 501.

"The Latest Chapter of the American Law of Prize and Capture."—54 American Law Register, 537.

"Family and the Law of Family in Ancient Arabia and under the Mohammedan Doctrines."—54 American Law Register, 453.

"The Power of Congress to Regulate Interstate Insurance Transactions."—10 Law Notes, 124.

"Validity and Effect of Conditions Attached to Legacies and Devises against Contesting Will."—10 Law Notes, 128.

Privileged Communications Applied to New Conditions."—63 Central Law Journal, 261.

"The Limitation of Actions Brought by Creditors against Corporation Stockholders for Corporate Debts."—18 Green Bag, 550.

"The Use of Medical Books in the Examination of Experts."—4 Criminal Law Journal of India, 33.

"The Ethics of Corporal Punishment."—4
Criminal Law Journal of India, 52.

"Doctrine in Virginia as to the Duty of a Railroad Company to Licensees on Its Tracks."—12 Virginia Law Register, 419.

"The Quality of Jurors."—12 Virginia Law Register, 430.

"The Supreme Court and Its Method of Work."—I Illinois Law Review, 151.

"The Collection of a Judgment in Illinois."—1 Illinois Law Review, 157.

"Mortmain."—63 Central Law Journal, 240.

"The Divorce Congress and Suggested Improvements in the Statutory Law Relating to Divorce."—39 Chicago Legal News, 56.

The Humorous Side.

JUDGES BUT NOT LAWYERS.—A gentleman stopping at a hotel in St. Paul during the recent session of the Bar Association asked a colored porter with whom he was well acquainted if the hotel was filled. The reply was, "Yes sah, filled to the roof." On asking if the guests were lawyers, the porter replied, "Yes sah, mostly lawyers; those that are not lawyers are judges."

THE SIMPLICITY OF HYPOTHETICAL QUESTIONS.—When Nathan M. Morse was trying the Tuckerman Will Case before Judge McKim, Dr. Jelley, the well-known expert on insanity, was one of the witnesses. One of the hypothetical questions asked of the witness by Mr. Morse contained no less than 20,000 words. The lawyer started this pithy question at the opening of court and closed only a few minutes prior to the noon adjournment. The point that Mr. Morse was endeavoring to bring out related to the mental condition of the testator when he made his will.

This is said to have been the longest single interrogation ever made in a court of law, and the answer comprised just three words, "I do not."—Boston Herold.

Is a necessity to every Federal practitioner and a help to

In 1891 Congress, realizing that the pressure on the U. S. Supreme Court must be relieved organized the "Circuit Courts of Appeals" giving them final jurisdiction over many cases hitherto appealable to the highest

The C. C. A. Reports give the only exclusive report of the decisions of this court. They are liberally annotated with notes on court practice, and practical daily questions, and each new volume gives all the decisions to date.

Send for descriptive circulars and a copy of the "Index to Notes."

The Lawyers' Co-op. Publishing Co. c 567 Rochester N. Y.

Delaware Corporations

Operate in Every Part of the World.

Liberal, Inexpensive, Adjudicated.

Copy of Law, complete set of forms and full information without charge.

Delaware Charter

Guarantee & Trust Co. 925 Market St. Wilmington, Del.

CORNELL UNIVERSITY **COLLEGE OF LAW**

Three-year course including only law subjects. Four-year course including also subjects in history, eco-nomics and finance. Seven resident professors besides non-resident lecturers. Library of over 36,000 volumes. Special Department of Practice. College year begins in late September. For particulars address, Dean of the College of Law.

CORNELL UNIVERSITY, ITHACA, N. Y.

LAWYERS DOUBT NO MORE JUDGES

Submit all questions to this Bureau. Forward a statement of the facts, and we will tell you what the law is in any juriadiction, and deriverbash, decisions in support of the law as decition, and deriverbash, decisions in support of the law as our way. Our facilities are unlimited. We guarantee satisfaction. Lawyers may now go into court fully prepared, and Judges may decide with all precedents before them. No publicity.

LAWYERS' CONSULTATION BUREAU. 22 Second St., W. B., Washington, D. C.

JONES

TELEGRAPH AND TELEPHONE COMPANIE

The Only Work on this Important Subject, New, Exhaustive and Up-to-Date

Including Corporation Law as applied to this important subject. Every branch of the subject has been carefully developed. The most important law text book of the year.

One Large Volume \$6.00 Net.

Sent Prepaid on Receipt of Price

PUBLISHED AND FOR SALE BY

VERNON LAW BOOK CO.,

KANSAS CITY

MISSOURI

man the sked ll acreply ask-

te

al,

by

era

m-

ur-

of

Ita

inia

of

Illi-

nal,

Imting

6.

orter those QUESrying e Mc-

ert on one of e witthan pithy closed

on adse was e menmade

st sinurt of three

ART OF ADVOCATES

By Hon. J. W. Donovan, Author of Modern Jury Trials, Tact in Court, Skill in Trials, Etc.



HIS is the latest of Judge Donovan's helpful Books for the young lawyer. Like its

companion works, Tact in Court and Skill in Trials it is full of the good things every young lawyer appreciates and finds most valuable in learning the ways and the art of the advocate.

> Bound in Art Buckram 150 pages Side Pocket Size 4 x 7 Price

A One Dollar Bill

Uniform with the above

Tact in Court 1 Vol. \$1.00 Skill in Trials 1 Vol. \$1.00

Send cash with order and we will deliver free.

Lawyers Co-operative Publishing Co., Rochester, N. Y.

A SMALL BET INDISPENSIBLE TO ATTOR-NEYS OF RAILROADS AND SHIPPERS

THE INTERSTATE COMMERCE REPORTS

11 VOLS TO 1906 PRICE \$44

This series faithfully and fully reports all the decisions of the National Commission which was constituted in 1887.

The earlier volumes give also all there is on the subject in the U. S. Constitution, the English Railways and the Canal Acts of 1854, 1868 and 1875, and all decisions of the courts, annotated, from 1887 to 1896, with amendments to statute, rules and forms.

It is issued in parts, and bound volume is sent when complete. Subscription may be entered to current volume at any time. Price, \$4.00.

Send for sample part, free.

THE LAWYERS CO-OPERA-TIVE PUBLISHING CO. ROCHESTER, N. Y.

MEDICAL JURISPRUDENCE

WHARTON AND STILLE FIFTH EDITION



HIS is a new edition of the great authority on the subject of Medical Jurisprudence brought down to date (1905), and in many parts entirely re-written, by the following efficient corps of well-known specialists: - Dr. James H. Lloyd, neurologist to the Philadelphia Hospital, and

consulting neurologist to the State Hospital; Dr. Robert Amory, a noted anthority on the physiological action of drugs, and sometime president of the Massachusetts Medico-Legal Society; Dr. Robert L. Emerson, instructor in physiological chemistry at Harvard; Prof. Truman Abbe, M. D., of Georgetown Univ. Medical School, and the distinctively legal work by Mr. Frank H. Bowlby, of our editorial staff.

Vol 1, Mental Unsoundness. Vol. 2, On Poisons. Vol. 3, Physical Conditions and Treatment

While the general plan of the 4th edition has been followed, the great number of cases on these subjects during the past 20 years has required a virtual re-writing of a large part of the work.

A post-card request will bring Table of Contents of all 3 volumes.

The Lawyers' Co-op. Publishing Co. Rochester N. Y. 225 Dearborn St. Chicago 21 Hassen St. New York

ect 5), ing H. and L. of, a the aff.

the

Y.



"ACT OF GOD"

A stenographer, writing up a contract, carefully provided against interference by "an active God." That suggests the necessity of being on one's guard.

The Judicial and Statutory Constructions of the phrase "act of God" fill sixteen columns of "Words and Phrases." These interpretations may not be interesting to theologians, but they are of vital importance to lawyers.

For the meaning of a word, consult "Words and Phrases."

West Publishing Co., St. Paul, Minn.

Look ahead

You are trying to build up a good working law library. How do you know that you are spending your money for this purpose to the best advantage?

There is one way you may know with certainty, if you subscribe to Lawyers Reports Annotated, New Series. You can judge the future by the past, which is a good rule to apply at any time.

The L. R. A. First Series was begun 18 years ago. It is now the most valued set of law books in the United States

In the New Series, begun in June, 1906, we shall give annually at least 75 per cent more matter, which with other improvements will, in the same length of time, give the series a value at least twice that of the First Series. This is proven by the volumes of the New Series already issued. If you have not seen sample pages they will be sent on request.

L. R. A. is no experiment. Order now. When ready you can add 1-70 First Series and have the continuous set, the most valuable law books ever published.

THE LAWYERS CO-OPERATIVE PUB. CO. ROCHESTER, N. Y.

New York 81 Nassau St. CUT OFF HERE AND MAIL US.

Chicago 505 Lakeside Bldg.

St. Paul Nat. Ger. Am. Bk. Bldg.

Lawyers Co-op. Pub. Co.,

You may forward the volumes already issued of the L. R. A. New Series bound in (Buckram.) and continuations at the rate of six volumes a year until further notice for all of which I agree to pay at the rate of \$4.00 per month till all books received are paid for, and thereafter as delivered. Title to books to remain in vendor till paid for. Draft for overdue payments will be honored on three days' notice.
SUBSCRIBER HAS PRIVILEGE OF RETURNING ORIGINAL SHIPMENT

WITHIN THIRTY DAYS, CANCELLING ORDER.

c676

